

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 19, 2013 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 19. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2) [eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON SEPTEMBER 16, 2013 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 3, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 10, 2013. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 20 THROUGH 39. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON AUGUST 26, 2013, AT 2:30 P.M.

August 19, 2013 at 1:30 p.m.

Matters to be Called for Argument

1. 13-28417-A-13 PAUL/SARAH HAMM ORDER TO
SHOW CAUSE
7-29-13 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$70 due on July 24 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

2. 09-35520-A-13 BARON/RAQUEAL DARNELL MOTION TO
MET-3 VALUE COLLATERAL
VS. HSBC BANK NEVADA, N.A. 7-11-13 [63]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The debtor asks the court to value a television set that, together with other electronic equipment, secures the claim of the respondent.

The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject television. In the debtor's opinion, the subject property had a value of \$500 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004).

Despite this valuation, the court is not determining, however, that the respondent's secured claim is limited to the \$500 value. This is because the proof of claim filed by the creditor identifies other property that also secures its claim. This motion does not address the value of that property. Therefore, the court cannot, at this time, determine that the respondent's secured claim is \$500 or some other amount.

3. 12-32620-A-13 BRUCE/DAWN PALESTINI MOTION TO
CA-2 MODIFY PLAN
7-10-13 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

There are two competing modified plans, one proposed by the debtor and one by the trustee. Both provide for payment in full of unsecured claims. The debtor's plan, however, does this over a shorter duration (23 months, as opposed to a 36-month duration in the trustee's plan) because the monthly plan payment will be \$2,848 for the remainder of the plan, as opposed to the \$2,254.27 proposed by the trustee.

There is one additional material difference. The debtor estimates that nonpriority unsecured claims total \$26,859.27 while the trustee estimates them at slightly less than \$74,000. At the higher amount, the plan duration proposed by the debtor will not pay these claims in full.

However, the court's review of the proofs of claim indicates that there are total nonpriority unsecured claims of \$26,389.79, an amount that closely approximates the debtor's estimate. A review of the docket uncovers no valuation or lien avoidance motions that might make claims filed as secured, unsecured claims.

Therefore, the debtor's plan is feasible as required by 11 U.S.C. § 1325(a)(6) and it is preferable to the plan proposed by the trustee because it will result in payment in full over a shorter time period.

4. 12-32620-A-13 BRUCE/DAWN PALESTINI MOTION TO
JPJ-1 MODIFY PLAN
6-27-13 [42]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

There are two competing modified plans, one proposed by the debtor and one by the trustee. Both provide for payment in full of unsecured claims. The debtor's plan, however, does this over a shorter duration (23 months, as opposed to a 36-month duration in the trustee's plan) because the monthly plan payment will be \$2,848 for the remainder of the plan, as opposed to the \$2,254.27 proposed by the trustee.

There is one additional material difference. The debtor estimates that nonpriority unsecured claims total \$26,859.27 while the trustee estimates them at slightly less than \$74,000. At the higher amount, the plan duration proposed by the debtor will not pay these claims in full.

However, the court's review of the proofs of claim indicates that there are total nonpriority unsecured claims of \$26,389.79, an amount that closely approximates the debtor's estimate. A review of the docket uncovers no valuation or lien avoidance motions that might make claims filed as secured, unsecured claims.

Therefore, the debtor's plan is feasible as required by 11 U.S.C. § 1325(a)(6) and it is preferable to the plan proposed by the trustee because it will result in payment in full over a shorter time period.

5. 13-28021-A-13 BRUNO/GRACIA AMATO MOTION TO
EJS-1 VALUE COLLATERAL
VS. AMERICAN HONDA FINANCE 7-22-13 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection will be overruled.

This valuation motion addresses the value of a 2010 Honda Civic that secures

American Honda Finance's Class 2 claim. The debtor opines that the vehicle has a value of \$9,675 based on the vehicle's model year, 119,000 miles, and need for a variety of repairs, including minor body damage, back brakes, transmission repair, and steering noise.

The respondent counters that the value of the vehicle is \$11,100 based on a retail evaluation by the NADA Official Used Car Guide.

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The court rejects the value proposed by the creditor for the simple reason that it is based on a "clean" retail value. That is, a similar vehicle that has been reconditioned for resale. This vehicle has not been reconditioned and is in need of repairs. Considering the difference in the proposed values, the court concludes that the lower value suggested by the debtor represents a reasonable approximation of the cost to a retailer to recondition the vehicle.

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| 6. | 13-26222-A-13 PAJO/VERA KARISIK PPR-1 JPMORGAN CHASE BANK, N.A. VS. | OBJECTION TO CONFIRMATION OF PLAN 8-1-13 [23] |
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

The plan misclassifies a home loan that is in default as a Class 4 claim. Class 4 is reserved for long term secured claims not in default and not modified by the plan. The subject claim was in default when the case was filed. The failure to cure this default is a violation of the anti-modification provision in 11 U.S.C. § 1322(b)(2) and a violation of 11 U.S.C. § 1325(a)(5)(B) which requires secured claims provided for by a plan be paid in full.

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| 7. | 13-25524-A-13 SUPATTRA STRAW JHW-1 FIRST INVESTORS SERVICING CORP. VS. | MOTION FOR RELIEF FROM AUTOMATIC STAY 7-17-13 [27] |
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot.

The court confirmed a plan on July 9, 2013. That plan provides for the movant's secured claim in Class 4. Class 4 secured claims are claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party to the creditor. The plan includes the following provision at section 2.11:

"Class 4 includes all secured claims paid directly by Debtor or third party.

Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

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| 8. | 13-28129-A-13 KAISER BEKHIT JPJ-1 | OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 7-30-13 [15] |
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

The debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be prejudicial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

11 U.S.C. § 1328(b) permits a discharge "at any time after confirmation of the plan" if three cumulative conditions are met: 1) the debtor's failure to complete payments under the plan is due to circumstances "for which the debtor should not justly be held accountable"; 2) the debtor has satisfied the best interests of creditors test of 11 U.S.C. § 1325(a)(4); and 3) modification of the plan is not practicable.

First, the debtor made all of the plan payments to the trustee. This is not a case where the debtor could not make the plan payments. Rather, this is a case where the plan payments did not pay the dividends required by the plan.

Second, the problem has arisen because a CLC (E*Trade) filed a proof of claim that indicates it is an unsecured claim when in fact it is a secured claim. Indeed, its claim is secured by the debtor's home and the confirmed plan required the debtor to pay the claim directly to the creditor. Because there is nothing before the court suggesting the contrary, the court concludes that the debtor made the monthly installment payments to E*Trade during the pendency of this case.

However, because CLC filed an unsecured claim on behalf of E*Trade, the trustee also paid E*Trade a dividend of \$15,486.37 on account of its "unsecured" claim. This payment not only benefitted E*Trade but it benefitted the debtor. In effect, the debtor paid the ongoing interest and principal installments during the case, and the trustee paid additional amounts that must have further reduced the principal owed to E*Trade.

In this circumstance, it is unfair to the truly unsecured creditors to reduce their dividend by the \$15,486.37. The debtor must either pay it to the trustee or recover it from E*Trade for redistribution to the unsecured creditors.

This is not unfair to debtor. For one thing, the notice of filed claims served on counsel for the debtor disclosed that the CLC/E*Trade claim was being paid as an unsecured claim but the debtor did nothing to object to the claim. Second, the debtor has benefitted by the additional amount paid to E*Trade. If this is not repaid, the debtor will receive a windfall. Finally, there is an alternative - sue to recover the additional payment to CLC/E*Trade.

The overpayment of CLC/E*trade is not a circumstances "for which the debtor should not justly be held accountable". As noted above, the debtor was advised well before the end of the case by the notice of filed claims, what claims had and had not been filed. It could have been determined that the claim had erroneously been filed as unsecured and should not be paid as such.

10. 13-25246-A-13 CORNELIUS/GLENDA MOTION TO
NUU-3 WESTBROOK CONFIRM PLAN
7-8-13 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

To pay the dividends required by the plan and the rate proposed by it will take 69 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

11. 11-46355-A-13 NANCY GREINER MOTION TO
PGM-4 MODIFY PLAN
5-8-13 [52]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

First, the debtor has failed to make \$2,000 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$2,000 is less than the \$2,611.70 in dividends and expenses the plan requires the trustee to pay each month.

Third, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender, BAC, has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

12. 09-22862-A-13 JOHNNY/ROSA MONTES MOTION TO
DN-3 APPROVE LOAN MODIFICATION
7-29-13 [162]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

13. 13-29665-A-13 ROY SMALLY AND VIVI MOTION TO
PGM-1 MITCHELL-SMALLY EXTEND AUTOMATIC STAY
7-30-13 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within six days of the filing of the current case. It was dismissed because the court concluded the debtor was not eligible for chapter 13 relief because the debtor's secured debt exceeded the cap set by 11 U.S.C. § 109(e).

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

Here, it appears that the debtor was eligible for chapter 13 relief in the prior case. In this case, to avoid the same problem, this motion does not mention the reason the prior case was dismissed and the debtor's schedules

simply change the amounts owed and the value of property securing claims in order to sidestep the eligibility problem if someone happened to discover it.

14. 13-28167-A-13 MATTIE LEE
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-30-13 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

First, the statements and schedules contain inaccuracies regarding the debtor's income. Schedule I and Form 22 do not include the debtor's income from work as an independent contractor. And, Form 22 does not include the rental income that appears on Schedule I. Without accurate disclosure of her income, the debtor cannot meet the burden of showing that her plan is feasible or that it devotes all projected disposable income to her unsecured creditors. See 11 U.S.C. § 1325(a)(6) and (b).

Second, attempting to confirm a plan while providing inaccurate information regarding her income in the schedules and statements is a breach of the duties imposed by 11 U.S.C. § 521(a)(1), (3) and (4). To attempt to confirm a plan in this circumstance is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, the debtor has not proven the proposed plan will pay nonpriority unsecured creditors what they would receive in a chapter 7 liquidation. See 11 U.S.C. § 1325(a)(4). This is due to the fact that the debtor has scheduled her residence at its assessed value as opposed to its fair market value. The former may or may not approximate fair market value and the amount unsecured creditors would receive in a chapter 7 liquidation is based on the fair market value of assets.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be prejudicial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

15. 13-27368-A-13 MARLO/LORETA ONG
CA-3

MOTION TO
CONFIRM PLAN
7-2-13 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

First, the plan is unsigned. Everything filed in a bankruptcy case must be signed. See Fed. R. Bankr. P. 9011.

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Green Tree Servicing in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

16. 13-27368-A-13 MARLO/LORETA ONG
CA-3

COUNTER MOTION TO
DISMISS CASE
7-24-13 [40]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be prejudicial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

17. 13-27681-A-13 RODNEY/MICHELLE HYLTON
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-18-13 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained and the motion to dismiss the case will be conditionally denied.

The debtor has not discharged the duties imposed by 11 U.S.C. § 521(a)(1), (a)(2), and (a)(3). First, the debtor has not filed the required itemization of business expenses required by Schedule J. Second, despite the fact that the

debtor is relying on income generated by a business operated by the debtor, the debtor answered "none" to questions 18 through 25 on the Statement of Financial Affairs. These questions make inquiry into the finances of a business operated by the debtor. Also, Schedule B fails to list an interest in a business. The failure to make complete disclosure of the related business is a breach of the obligation to accurately schedule assets, disclose relevant financial information and cooperate with the trustee. To attempt to confirm a plan in this circumstance is bad faith. See 11 U.S.C. § 1325(a)(3).

Also, the plan provides payment in full of two consumer debts owed to two insurance companies while paying an approximate 10% dividend to other unsecured creditors. Absent some compelling justification for this differing treatment, the court must conclude that this is an unfair discrimination prohibited by 11 U.S.C. § 1322(b)(1).

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be prejudicial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

18. 12-39485-A-13 MICHAEL/STACIE MARTINEZ MOTION FOR
PD-1 AN ORDER CONFIRMING THAT LOAN
 MODIFICATION DISCUSSIONS WILL NOT
 VIOLATE THE AUTOMATIC STAY
 7-15-13 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

A home lender seeks a declaration that it will not offend the automatic stay to discuss a loan modification with the debtor. No relief will be ordered for a variety of reasons.

First, declaratory relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001.

Second, there is a confirmed plan in this case that provides for this claim in Class 4. The plan includes the following provision at section 2.11:

"Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Third, the idea that the automatic stay stops the debtor and a creditor from discussing the treatment of a secured claim in a chapter 13 plan is preposterous. See 11 U.S.C. § 1325(a)(5)(A).

19. 13-22189-A-13 DAVID/CYNTHIA MCREYNOLDS
LR-2

MOTION TO
CONFIRM PLAN
7-5-13 [49]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied. The motion seeks to confirm a plan the court previously refused to confirm.

THE FINAL RULINGS BEGIN HERE

20. 12-36604-A-13 PEDRO PEREZ AND NORMA MOTION TO
TOG-5 CASTRO SET ASIDE
7-17-13 [84]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. The debtor consents to the relief requested. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted and the February 25, 2013 order granting the debtor's valuation motion will be vacated. However, the debtor may reset the valuation motion for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Counsel for the creditor shall lodge an order.

21. 13-28804-A-13 JOHNATHAN/AUTUMN CABODI MOTION TO
SJS-1 VALUE COLLATERAL
VS. USAA, F.S.B. 7-18-13 [16]

Final Ruling: The objecting creditor's request for a continuance will be granted. The hearing is continued to 30, 2013 at 1:30 p.m. If the debtor wishes to file additional evidence, it shall be filed and served no later than September 3, 2013. The creditor's evidence and argument shall be filed and served no later than September 16, 2013. The debtor's reply, if any, shall be filed and served no later September 23, 2013.

22. 13-23610-A-13 TOMAS UMALI MOTION TO
JGD-1 CONFIRM PLAN
7-8-13 [41]

Final Ruling: The motion will be dismissed.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at then second and third addresses listed above.

23. 10-38212-A-13 CRYSTAL BAULWIN MOTION TO
SDB-4 APPROVE LOAN MODIFICATION
7-18-13 [64]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir.

2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

24. 09-35520-A-13 BARON/RAQUEAL DARNELL MOTION TO
MET-2 MODIFY PLAN
7-11-13 [57]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

25. 13-29026-A-13 MANUEL/ALMA PEREZ MOTION TO
WW-1 VALUE COLLATERAL
VS. WELLS FARGO BANK, N.A. 7-22-13 [16]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$450,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Home Mortgage. The first deed of trust secures a loan with a balance of approximately \$564,498 as of the petition date. Therefore, Wells Fargo Bank, N.A.'s claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re

Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$450,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

26. 13-26328-A-13 WAYNE EGY
JT-1

MOTION TO
CONFIRM PLAN
7-2-13 [18]

Final Ruling: The motion will be dismissed.

According to the certificate of service, the motion was not served on any parties in interest. There is no service list included in, or attached to, the certificate. Service on all parties in interest is necessary. See Fed. R. Bankr. P. 2002(b).

27. 13-25634-A-13 PHILLIP AVERY AND
NF-2 MICHELLE GIBBLE

MOTION TO
CONFIRM PLAN
7-3-13 [24]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

28. 10-53836-A-13 TERRY YATES AND DENA
SJJ-2 MOITOZA-YATES
VS. JPMORGAN CHASE BANK, N.A.

MOTION TO
VALUE COLLATERAL
7-1-13 [57]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$245,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bank of America. The first deed of trust secures a loan with a balance of approximately \$277,462 as of the petition date. Therefore, JPMorgan Chase Bank, N.A. 's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's

principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$245,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

29. 13-28139-A-13 JEREMY WHATLEY
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-30-13 [15]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. The debtor agrees with the objection. Accordingly, the objection and related dismissal motion are removed from calendar for resolution without oral argument.

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

To pay the dividends required by the plan and the rate proposed by it will take 75 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be prejudicial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

30. 09-40140-A-13 RICARDO/BLANCA TORRES
JLK-2

MOTION TO
APPROVE LOAN MODIFICATION
7-2-13 [28]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

31. 13-20943-A-13 CRISTIE TALBOTT
SJJ-4
VS. BANK OF AMERICA, N.A.

MOTION TO
VALUE COLLATERAL
7-22-13 [74]

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on August 1.

32. 13-27847-A-13 MARIA VALDEZ
JPJ-1
OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-29-13 [21]

Final Ruling: The objection and motion to dismiss the case are moot. The case was dismissed on August 12.

33. 09-21062-A-13 JEANNETTE PATTERSON
CA-3
MOTION TO
MODIFY PLAN
7-9-13 [55]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

34. 13-20171-A-13 MARK/PATRICIA PENROSE
JLK-3
MOTION TO
CONFIRM PLAN
7-10-13 [47]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

35. 13-29371-A-13 DEVERIE JARRETT
ERO-1
VS. JPMORGAN CHASE BANK, N.A.
MOTION TO
VALUE COLLATERAL
7-17-13 [11]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the

relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$238,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Bank Home Mortgage. The first deed of trust secures a loan with a balance of approximately \$258,681 as of the petition date. Therefore, JPMorgan Chase Bank, N.A.'s claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$238,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

36. 08-30072-A-13 MICHAEL ZARI MOTION TO
SAC-3 APPROVE LOAN MODIFICATION
7-10-13 [56]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

37. 13-26685-A-13 KATHLEEN STEFFENS MOTION TO
CAH-2 CONFIRM PLAN
7-2-13 [29]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

38. 13-29089-A-13 WILLIAM/JUDITH CRANDALL
SLH-1
VS. WELLS FARGO BANK, N.A.

MOTION TO
VALUE COLLATERAL
7-17-13 [12]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$327,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationstar Mortgage, LLC. The first deed of trust secures a loan with a balance of approximately \$395,711 as of the petition date. Therefore, Wells Fargo Bank, N.A.'s claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an

adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$327,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

39. 11-48697-A-13 CHRISTOPHER/JESSICA MOTION TO
JT-4 PARKER MODIFY PLAN
7-8-13 [66]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.